

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL ANTONIO PACHECO,

Defendant-Appellee.

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UNPUBLISHED

December 21, 2006

No. 265318

Genesee Circuit Court

LC No. 88-039081-FC

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from an amended judgment of sentence providing that defendant's sentences for kidnapping, MCL 750.349, and first-degree criminal sexual conduct, MCL 750.520b, be served concurrent, rather than consecutive, to a prior sentence for prison escape. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was serving a two-to-five-year prison sentence in 1987. He escaped and committed the instant offenses. After he was convicted and sentenced in this case, he pleaded guilty to, and was sentenced for, prison escape. Defendant appealed his convictions and sentences in this case. This Court affirmed defendant's convictions but vacated his sentences as invalid and remanded for resentencing. *People v Pacheco*, unpublished opinion per curiam of the Court of Appeals, issued December 10, 1990 (Docket No. 111816). On remand, the trial court imposed lesser sentences but ordered that they be served consecutively to the sentence defendant was already serving for prison escape. MCL 768.7a(1). Defendant appealed and this Court affirmed, stating in part, "Consecutive sentencing is mandatory, MCL 768.7a, and was properly imposed by the last-in-time sentencing court. *People v Chambers*, 430 Mich 217, 230[; 421 NW2d 903] (1988)." *People v Pacheco*, unpublished order of the Court of Appeals, entered November 29, 1995 (Docket No. 168446).

Defendant continued to dispute the propriety of consecutive sentencing. Eventually, the trial court agreed that because defendant was not subject to consecutive sentencing when first sentenced in 1988, consecutive sentences could not be imposed when he was resentenced, even though by that time defendant was serving a sentence for prison escape. It therefore amended the judgment of sentence to provide that defendant's sentences be served concurrent to his sentence for prison escape.

We agree with the prosecutor that the trial court's decision was barred by the law of the case doctrine. That "doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue. Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (citation omitted). Because this Court previously determined that consecutive sentencing was required and there has not been any change in the law regarding consecutive sentencing, the trial court was prohibited from taking any action inconsistent with that ruling. *Everett v Nickola*, 234 Mich App 632, 635; 599 NW2d 732 (1999). We also note that the law of the case doctrine applies "without regard to the correctness of the prior determination, so that a conclusion that a prior appellate decision was erroneous is not sufficient in itself to justify ignoring the law of the case doctrine." *Grace v Grace*, 253 Mich App 357, 363; 655 NW2d 357 (2002).

Reversed and remanded for reinstatement of the consecutive sentences. Jurisdiction is not retained.

/s/ William B. Murphy  
/s/ Michael R. Smolenski  
/s/ Kirsten Frank Kelly